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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

14 DANIEL MAXIE, ) Case No. C 04-02255 MMC  
15 Plaintiff, ) STIPULATION AND [PROPOSED]  
16 vs. ) ORDER TO AMEND PRETRIAL  
17 HORIZON LINES, LLC and MATSON ) PREPARATION ORDER  
18 NAVIGATION COMPANY )  
19 Defendants. )  
20 \_\_\_\_\_

21 The parties to the above-entitled action stipulate, agree and request the court to amend the  
22 Pretrial Preparation Order entered on May 2, 2005. At a status conference on June 24, 2003 the  
23 Court confirmed the adoption of the parties' revised discovery plan, including a September 2, 2005  
24 mediation deadline and a medical expert disclosure deadline of September 16, 2005, consistent with  
25 a Trial date of November 28, 2005 and a Pretrial Conference on November, 15, 2005. The proposed  
26 and approved dates were necessitated by Mr. Maxie's having undergone back surgery in March  
27 2005, and in anticipation of his reaching maximum medical cure and permanent and stationary status  
28 by mid July, 2005.

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## CURRENT STATUS

The parties are advised that Mr. Maxie's medical condition is improving but that he is still participating in physical therapy. Mr. Maxie's surgeon has not opined as to a likely date by which maximum cure will be achieved.

The parties have completed the liability phase of Mr. Maxie's deposition and by stipulation are deferring the medical and damage phase until he becomes permanent and stationary. In an effort to maintain the current trial date despite the continuing uncertainty as to Mr. Maxie's prognosis, the parties propose revising the pre-trial order as follows:

JURY TRIAL DATE: November 28, 2005 at 9:00 a.m., Courtroom 7, 19<sup>th</sup> Floor;

NON-EXPERT DISCOVERY CUTOFF: September 30, 2005;

LAST DAY FOR FILING DISPOSITIVE MOTIONS: September 2, 2005;

## EXPERT DISCLOSURE AND REPORTS October 14, 2005;

EXPERT DISCOVERY CUTOFF: October 28, 2005;

**SETTLEMENT CONFERENCE:** Private mediation or settlement conference conducted by Magistrate Judge James Larson to be completed by October 2005;

PRETRIAL CONFERENCE: November 15, 2005 at 3:00  
p.m.:

MEET AND CONFER: Lead trial counsel shall meet and confer no later than October 14, 2005.

Should Mr. Maxie's recovery be further delayed, the parties will immediately advise the Court and propose appropriate revisions to the current pretrial and trial dates.

Respectfully Submitted,

Dated: August 9, 2005

BANNING MICKLOW BULL & LOPEZ LLP

By: S/ EDWARD BULL

Edward Bull  
Attorneys for Plaintiff  
**DANIEL MAXIE**

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1 Dated: August 9, 2005

LAW OFFICES OF HARVEY I. WITTENBERG

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3 By: S/ HARVEY J. WITTENBERG  
4 Harvey I. Wittenberg  
5 Attorneys for Defendant  
6 HORIZON LINES, LLC

7 Dated: August 9, 2005

FLYNN DELICH & WISE

8 By: S/ JAMES B. NEBEL  
9 James B. Nebel  
10 Attorneys for Defendant  
11 U.S. SHIP MANAGEMENT, INC.

12 Dated: August 9, 2005

GIBSON ROBB & LINDH LLP

13 By: S/ PETER A. LINDH  
14 Peter A. Lindh  
15 Attorneys for Defendant  
16 MATSON NAVIGATION COMPANY

17 IT IS SO ORDERED

18 DATED: August 10, 2005

  
19 UNITED STATES DISTRICT JUDGE  
20 MAXINE M. CHESNEY